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and Smick Enterprises, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AARON GREENSPAN,

Plaintiff,

v.

OMAR QAZI, et al.,

Defendants.

Case No. 3:20-cv-03426-JD

**DECLARATION OF KARL S.
KRONENBERGER IN SUPPORT OF
DEFENDANTS OMAR QAZI AND
SMICK ENTERPRISES, INC.'S
ADMINISTRATIVE MOTION TO
CLARIFY AND EXTEND TIME TO
RESPOND TO PLAINTIFF'S FIRST
AMENDED COMPLAINT, TO CLARIFY
AND SET A BRIEFING SCHEDULE
AND PAGE LIMIT FOR DEFENDANTS'
RESPONSIVE PLEADING, AND TO
CLARIFY THE DEFAULT AND
DEFAULT REQUEST, PURSUANT TO
LOCAL RULES 6-3 AND 7-11**

Time: In Chambers
Date: In Chambers
Before: The Hon. James Donato
Ctrm: 11, 19th Floor

1 I, Karl S. Kronenberger, declare as follows:

2 1. I am an attorney admitted to practice law in the State of California and
3 before this Court. I am a partner at the law firm of Kronenberger Rosenfeld, LLP, counsel
4 of record for Defendants Omar Qazi and Smick Enterprises, Inc. ("Defendants") in this
5 action. Unless otherwise stated, I have personal knowledge of the facts stated herein.

6 2. On July 21, 2020, I emailed Plaintiff, stating "I agree to accept service of the
7 First Amended Complaint ("FAC") by email. Let me know if we have an agreement."
8 Plaintiff responded the same day stating, "We have an agreement." Based on my
9 calculation, Defendants' responsive pleading would not have been due until August 11,
10 2020 (21 days after service) under Rule 4, assuming prior service was not effective, or
11 otherwise on August 4, 2020 (14 days after service) under Rule 15(a)(3).

12 3. Given the ambiguities about service and the responsive pleading deadline,
13 and given the breadth of the FAC and exhibits, I emailed Plaintiff on July 22, 2020 asking
14 if Plaintiff would stipulate to extend the deadline for responding to the FAC to August 18,
15 2020. Plaintiff responded the same day stating "I will not stipulate."

16 4. My office is currently working to prepare Defendants' response to the FAC.
17 Defendants will incur substantial harm absent the requested relief as Defendants and my
18 office will have insufficient time to respond to the numerous claims and voluminous FAC.

19 5. I do not believe that the requested relief will impact the case scheduling,
20 given that the case is at an early procedural posture, Defendants have not obtained a
21 prior modification of the scheduling order, and the Court granted a similar motion in this
22 case by Defendants Elon Musk and Tesla, Inc.

23 6. On July 24, 2020, I emailed Plaintiff asking if he would stipulate to the
24 requested relief. Plaintiff responded, "I will stipulate to a hypothetical combined briefing
25 for both defendants of 25 pages with a 25-page opposition and 15-page reply, conditional
26 upon your acceptance of e-mail service for all documents in this case going forward. To
27 be clear, that 25-page briefing would have to combine the planned anti-SLAPP special
28 motion to strike and your planned motion to dismiss in one document. I do not stipulate

1 to anything regarding an extension of time or default.” A true and correct copy of my July
2 24, 2020 email correspondence with Plaintiff is attached hereto as **Exhibit A**. Further, a
3 true and correct copy of the parties’ stipulation as to the “hypothetical” extension of page
4 limits for Defendants’ responsive pleading to the FAC is attached hereto as **Exhibit B**.

5 I declare under penalty of perjury under the laws of the United States of America
6 that the foregoing is true and correct.

7
8 Executed on July 28, 2020.

s/ Karl S. Kronenberger

Karl S. Kronenberger

Exhibit A

From: [Karl Kronenberger](#)
To: [Aaron Greenspan](#)
Cc: [Jeff Rosenfeld](#); [Liana Chen](#); [Leah Vulic](#)
Subject: Administrative Motion
Date: Friday, July 24, 2020 12:43:14 PM

Dear Aaron,

Defendants Omar Qazi and Smick Enterprises, Inc. (“Defendants”) intend to file an administrative motion with the Court seeking the following relief:

1. That the Court extend and clarify the date by which Defendants must respond to Plaintiff’s First Amended Complaint (“FAC”) to [August 18, 2020](#).
2. That the Court allow Defendants to file a motion to strike the FAC under California’s anti-SLAPP statute, Civ. Proc. Code §425.16 and a motion to dismiss under Fed. R. Civ. P. 12(b)(6) supported by a single memorandum of points and authorities not to exceed 25 pages. Plaintiff will be allowed to file an opposition brief not to exceed 25 pages by [September 8, 2020](#); and Defendants may file a reply brief not to exceed 15 pages by [September 22, 2020](#).
3. That the Court find that Plaintiff’s clerk’s default and Plaintiff’s pending request for default against Defendants are moot, and that the Court lift those defaults.

Can you please let me know whether you will stipulate to this relief.

Sincerely,

Karl

Karl S. Kronenberger
www.KRInternetLaw.com

From: [Aaron Greenspan](#)
To: [Karl Kronenberger](#)
Cc: [Jeff Rosenfeld](#); [Liana Chen](#); [Leah Vulic](#)
Subject: Re: Administrative Motion
Date: Friday, July 24, 2020 1:03:00 PM

Karl,

Upon second thought, apart from deadlines, I will stipulate to a hypothetical combined briefing for both defendants of 25 pages with a 25-page opposition and 15-page reply, conditional upon your acceptance of e-mail service for all documents in this case going forward. To be clear, that 25-page briefing would have to combine the planned anti-SLAPP special motion to strike and your planned motion to dismiss in one document.

I do not stipulate to anything regarding an extension of time or default. I reserve all rights.

Aaron

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Exhibit B

KRONENBERGER ROSENFELD, LLP

Karl S. Kronenberger (Bar No. 226112)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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AARON GREENSPAN,

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v.

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Defendants.

Case No. 3:20-cv-03426-JD

**STIPULATION RELATING TO SMICK
DEFENDANTS' ADMINISTRATIVE
MOTION UNDER CIV. L.R. 7-11**

1 Pursuant to Civil Local Rule 7-11, Defendants Omar Qazi and Smick Enterprises,
2 Inc. (collectively, the “Smick Defendants”) and Plaintiff Aaron Greenspan hereby
3 stipulate to extend the page limits for both parties in connection with the Smick
4 Defendants anticipated motions in response to the First Amended Complaint (“FAC”)
5 [D.E. 20], if and when the Smick Defendants are authorized to file the anticipated
6 motions, as follows:

7 WHEREAS, Plaintiff filed the Complaint [D.E. 1] on May 20, 2020;

8 WHEREAS, Plaintiff filed the FAC [D.E. 20] on July 2, 2020;

9 WHEREAS, the parties dispute issues relating to service of the Complaint and
10 FAC on the Smick Defendants, the deadline for the Smick Defendants to respond to the
11 FAC, and whether default on the original Complaint should be lifted or set aside and
12 whether the request for default on the FAC should be granted;

13 WHEREAS, if and when the Smick Defendants are authorized to file a
14 responsive pleading to the FAC, the Smick Defendants believe it would be more
15 efficient, for the Court and all parties, to file a single consolidated brief in support of two
16 anticipated motions (one special motion to strike under California’s anti-SLAPP statute,
17 Civ. Proc. Code §425.16, based on the pleadings only, and one motion to dismiss under
18 Federal Rule of Civil Procedure 12(b)(6)); and the Smick Defendants are filing an
19 administrative motion to clarify and extend the time to respond to the FAC, to clarify and
20 set a briefing schedule and page limits for the briefing, and to clarify the default and
21 default request;

22 WHEREAS, Plaintiff reserves, and does not waive, all rights to dispute the Smick
23 Defendants’ anticipated motions, including the right to dispute that an anti-SLAPP
24 motion could be properly filed in this case;

25 WHEREAS, regarding the Smick Defendants’ request to clarify and extend the
26 page limits related to the anticipated motions, the Smick Defendants state that the
27 length of the FAC, number of allegations, volume of exhibits, and number of issues and
28 claims, as well as the Smick Defendants’ proposal to combine the two anticipated

1 motions into one consolidated brief, support allowance of an opening brief of up to 25
2 pages, an opposition brief of up to 25 pages, and a reply brief of up to 15 pages;

3 WHEREAS, apart from issues relating to the deadlines, extension of time, and
4 default, Plaintiff agrees to stipulate to a “hypothetical” combined briefing with a 25-page
5 opening brief limit, a 25-page opposition limit, and a 15-page reply limit, conditioned
6 upon the Smick Defendants’ acceptance of email service for all documents;

7 WHEREAS, Plaintiff and the Smick Defendants mutually agree to email service
8 for all documents in this action that are not filed and served through ECF.

9 NOW THEREFORE, the parties jointly stipulate and request that the Court enter
10 an order that, if and when the Smick Defendants are authorized to file a responsive
11 pleading to the FAC, the page limits for briefing on the Smick Defendants’ anticipated
12 special motion to strike and motion to dismiss be combined in an opening brief not to
13 exceed 25 pages, with 25 pages for Plaintiff’s opposition, and 15 pages for the reply.

14
15 Respectfully Submitted,

16 DATED: July 28, 2020

KRONENBERGER ROSENFELD, LLP

17
18 By: /s/ Karl S. Kronenberger
Karl S. Kronenberger

19
20 Attorneys for Defendants Omar Qazi and
Smick Enterprises, Inc.

21
22 DATED: July 28, 2020

AARON GREENSPAN

23
24 By: /s/ Aaron Greenspan
Aaron Greenspan

ATTESTATION PURSUANT TO CIV. L.R. 5-1(i)(3)

Pursuant to Civ. L.R. 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the signatory.

DATED: July 28, 2020

KRONENBERGER ROSENFELD, LLP

By: /s/ Karl S. Kronenberger
Karl S. Kronenberger